IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO.81 OF 2003

IN

CIVIL REVISION APPLICATION NO. 1140 OF 2000

BALIRAM S. CHOUDHARI ..APPLICANT

V/S

PREMKUMAR B. MANNEWAS ..RESPONDENT

GOURI GODSE FOR THE APPLICANT

M.S. PURANIK & J.M. PURANIK FOR RESPONDENT.

CORAM : D.G. KARNIK, J.

DATE : 31ST AUGUST,2006.

P.C.

1. Heard the learned counsel for the parties.

2. This revision application is filed for condonation of delay of 272 days in making the application for setting aside the abatement of the Revision Application which stood abated on account of not bringing the legal representative of the original revision applicant, on record.

3. The original applicant was Baliram Shahadu

Choudhari. He died on 23rd February, 2002. An application to bring the heirs / legal representatives on record ought to have been made within the period of 90 days i.e. on or before 23rd May, 2002 (See Article 120 of Limitation Act). As the application for bringing the heirs on record was not made within the statutory period, the revision application stood abated on 24th May, 2002. An application to set aside the abatement could be made within 60 days thereafter i.e. on or before 21st July, 2002. No application was made within the time prescribed by Article 121 of the Limitation Act. However, the present Civil Application is made on 20th February, for condonation of delay in making the application for setting aside the abatement.

4. Normally the Court would be lenient in setting aside the abatement and in condoning the delay in making an application for setting aside the abatement, if the party is not aware of the death of the other side. Such application also be allowed if the heirs of the deceased are not aware of the pendency of the proceedings and therefore do not make an application for bringing themselves on record within the statutory period. In the present case, however, the facts disclose that the applicant, who is the son of the deceased, was not

only aware of the death of his father but was also aware of the proceedings. In fact, the revision application was filed by him as a constituted attorney of the deceased. The revision application was not filed by Baliram Shahadu Choudhari, the revision applicant but by the present applicant, as the constituted attorney. He was aware of his father's death. He did not make the application for bringing himself on record or even for setting aside the abatement, within the statutory period. No sufficient reason has been assigned for not making the application for setting aside the abatement within the prescribed time. The delay is gross, for more than 270 days. In the circumstances, the civil application is dismissed. The request of the petitioner to extend the interim relief is rejected.

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(D.G. KARNIK, J.)